

107TH CONGRESS  
1ST SESSION

# H. R. 1060

To amend the Truth in Lending Act to prohibit unfair or deceptive creditor acts or practices, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 15, 2001

Mr. LAFALCE (for himself, Mrs. MALONEY of New York, Mr. GUTIERREZ, Ms. LEE, Mrs. JONES of Ohio, Mr. CAPUANO, Mr. CLAY, Mr. HINCHEY, and Ms. SCHAKOWSKY) introduced the following bill; which was referred to the Committee on Financial Services

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## A BILL

To amend the Truth in Lending Act to prohibit unfair or deceptive creditor acts or practices, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Credit Card Predatory  
5       Practices Prevention Act of 2001”.

1 **SEC. 2. PROHIBITION ON UNFAIR OR DECEPTIVE CRED-**  
2 **ITOR ACTS OR PRACTICES IN SOLICITATIONS**  
3 **FOR CREDIT CARDS.**

4 (a) IN GENERAL.—Section 127 of the Consumer  
5 Credit Protection Act (15 U.S.C. 1637) is amended by  
6 adding at the end the following new subsection:

7 “(h) UNFAIR OR DECEPTIVE CREDITOR ACTS AND  
8 PRACTICES.—

9 “(1) IN GENERAL.—In the case of a credit card  
10 account under an open-end consumer credit plan, a  
11 creditor shall not engage in an unfair or deceptive  
12 act or practice.

13 “(2) BOARD DEFINITION OF UNFAIR OR DECEP-  
14 TIVE CREDITOR ACT OR PRACTICE.—The Board  
15 shall, in regulations, define what constitutes an un-  
16 fair or deceptive creditor act or practice in violation  
17 of this subsection.

18 “(3) SPECIFIC ACTS AND PRACTICES ARE UN-  
19 FAIR AND DECEPTIVE.—For purposes of such regu-  
20 lations, a creditor shall be determined to have en-  
21 gaged in an unfair and deceptive act or practice if—

22 “(A) in connection with any solicitation to  
23 open a credit card account for any consumer  
24 under an open end consumer credit plan, the  
25 creditor—

1 “(i) requires a consumer to pay an  
2 application, processing or other fee as a  
3 condition for applying for a credit card ac-  
4 count, or in advance of receiving the disclo-  
5 sures required by this section;

6 “(ii) requires a consumer to purchase  
7 any membership, product or service, in-  
8 cluding any credit protection, credit anal-  
9 ysis, or credit education product or service,  
10 as a condition for receiving a credit card  
11 account;

12 “(iii) represents that the credit card  
13 account does not require an annual fee,  
14 when the consumer is required to pay an  
15 enrollment fee, membership fee, or any  
16 form of service fee on a recurring basis;

17 “(iv) represents that a consumer is  
18 pre-approved, guaranteed approval, or oth-  
19 erwise has met the creditor’s underwriting  
20 standards to qualify for a specific offer of  
21 credit, when the consumer does not meet  
22 the standards for such credit, no such  
23 standards exist, or the solicitation con-  
24 stitutes only an invitation to apply for

1 credit or anything other than a firm offer  
2 of credit to the consumer;

3 “(v) represents that a consumer quali-  
4 fies to receive, or qualifies to apply to re-  
5 ceive, a credit card account, in which any  
6 stated term, including the line of credit  
7 amount, annual interest rate, annual fee  
8 amount or other term—

9 “(I) is not available to the con-  
10 sumer upon initiation of the account,  
11 but is made available, or is intended  
12 at the time of the representation to be  
13 made available, in installments over  
14 time in response to the consumer’s  
15 positive record of credit use and pay-  
16 ment;

17 “(II) is an annual interest rate  
18 or other term the issuer no longer  
19 makes available as part of credit card  
20 accounts for which the consumer  
21 qualifies, or that the issuer has reason  
22 to know will no longer be available to  
23 such consumer prior to the expiration  
24 of such period, as defined by regula-  
25 tion, that permits reasonable time for

1 consumer response to the solicitation;  
2 and

3 “(III) is an annual interest rate  
4 or other term that the issuer makes  
5 available only to selected consumers,  
6 or to consumers with preferred credit  
7 scores or ratings;

8 “(vi) represents that a credit card ac-  
9 count provides for credit protection, over-  
10 draft protection, travel insurance, or other  
11 account-related benefits and services that  
12 the issuer makes available separately, and  
13 at additional charge, to card holders; or

14 “(vii) issues a credit card account to  
15 a consumer who has responded to a direct  
16 solicitation, the account terms of which are  
17 materially different, in terms of being less  
18 favorable to the consumer, than the terms  
19 included in the solicitation that resulted in  
20 the consumer’s application;

21 “(B) in administering a credit card ac-  
22 count for any consumer under an open end con-  
23 sumer credit plan, the creditor—

24 “(i) enrolls a consumer in paid mem-  
25 berships or in any account-related service

1 or program, including credit insurance or  
2 credit protection, without the clear and un-  
3 ambiguous consent of the consumer after  
4 receiving complete disclosure of the terms  
5 and conditions for such membership, serv-  
6 ice, or program, as provided in regulation;

7 “(ii) posts a charge or debit to a con-  
8 sumer’s account for any product, service,  
9 or membership without the clear and un-  
10 ambiguous consent of the consumer after  
11 receiving complete disclosure of the terms  
12 and conditions for such membership, serv-  
13 ice, or program, as provided in regulation;

14 “(iii) engages in a pattern or practice  
15 of—

16 “(I) failing to mail the initial  
17 periodic statement required under  
18 subsection (b) of this section, or de-  
19 laying or withholding any subsequent  
20 periodic statement, for the purpose, or  
21 with the effect, of causing the con-  
22 sumer to incur late payment fees or  
23 other fees or penalties, or additional  
24 interest charges with respect to such  
25 account;

1                   “(II) scheduling payment due  
2                   dates in periodic statements to coin-  
3                   cide with holidays, weekend days, or  
4                   other days that the creditor is not  
5                   open for business, or otherwise not  
6                   available to receive or process billing  
7                   payments, for the purpose, or with the  
8                   effect, of causing the consumer to  
9                   incur late payment fees or other pen-  
10                  alties or additional interest charges  
11                  with respect to the account; or

12                  “(III) withholding the posting of  
13                  payments to a credit card account re-  
14                  ceived on or before the payment due  
15                  date stated in periodic statements for  
16                  the purpose, or with the effect, of  
17                  causing the consumer to incur late  
18                  payment fees or other penalties or ad-  
19                  ditional interest charges with respect  
20                  to such account;

21                  “(iv) increases the annual interest  
22                  rate on a credit card account, or removes  
23                  or increases any introductory interest rate  
24                  applicable to such account, for reasons  
25                  other than actions or omissions of the card

1 holder that are directly related to such ac-  
2 count, which shall be clearly and conspicu-  
3 ously described to the card holder in the  
4 information required to be disclosed under  
5 subsection (a), and then only after the con-  
6 sumer has been provided with appropriate  
7 notice, as provided in regulation; or

8 “(v) subject to paragraph (5), refuses  
9 to cancel or close a credit card account  
10 upon the request of a consumer; or

11 “(C) the creditor engages in any other  
12 practice that the Board shall determine, by reg-  
13 ulation or order, to be unfair, deceptive, in-  
14 tended to misrepresent or confuse the terms of  
15 a credit offer, or designed to evade the provi-  
16 sions of this subsection.

17 “(4) NOTICE TO CONSUMER OF FAILURE TO  
18 QUALIFY.—The Board shall prescribe regulations for  
19 procedures under which the creditor shall provide  
20 notice to any consumer of—

21 “(A) any failure of the consumer to qualify  
22 for an extension of credit or a credit card under  
23 the terms and conditions in an offer or sollicita-  
24 tion and the reasons for such failure to qualify;

1           “(B) the terms of a credit card account, if  
 2           any, that the consumer is qualified to receive,  
 3           which shall include all disclosures required  
 4           under subsection (c)(1) and shall meet all re-  
 5           quirements of this section; and

6           “(C) the procedures required of the con-  
 7           sumer to receive, or to apply to receive, the  
 8           credit card account disclosed under subpara-  
 9           graph (B).

10          “(5) PROCEDURES FOR CANCELLATION.—A  
 11          creditor may define procedures for requesting can-  
 12          cellation of an account, which shall be clearly de-  
 13          scribed in the information required to be disclosed  
 14          under subsection (a) and shall be reasonable.”.

15          (b) IMPROVED ENFORCEMENT AUTHORITY.—Section  
 16          127 of the Consumer Credit Protection Act (15 U.S.C.  
 17          1637) is amended by inserting after subsection (h) (as  
 18          added by subsection (a) of this section) the following new  
 19          subsection:

20          “(i) STATE ACTION FOR VIOLATIONS.—

21                 “(1) AUTHORITY OF THE STATES.—In addition  
 22          to such other remedies as are provided under State  
 23          law, if the attorney general of a State, or an officer  
 24          authorized by the State, has reason to believe that

1 any creditor has violated or is violating subsection  
2 (h), the State may—

3 “(A) bring an action on behalf of the resi-  
4 dents of the State to enjoin such violation in  
5 any appropriate United States district court or  
6 in any other court of competent jurisdiction;  
7 and

8 “(B) bring an action on behalf of the resi-  
9 dents of the State to enforce compliance with  
10 subsection (h), to obtain damages, restitution,  
11 or other compensation on behalf of the resi-  
12 dents of such State, or to obtain such further  
13 and other relief as the court may deem appro-  
14 priate.

15 “(2) RIGHTS OF FEDERAL AGENCIES.—

16 “(A) NOTICE.—The State shall serve prior  
17 written notice of any action commenced under  
18 paragraph (1) with respect to any depository in-  
19 stitution upon the Federal agency described in  
20 subsection (a) or (c) of section 108 with respect  
21 to such creditor and shall provide such agency  
22 with a copy of the complaint unless such prior  
23 notice is not feasible, in which case the State  
24 shall serve such notice immediately upon insti-  
25 tuting such action.

1           “(B) INTERVENING ACTION.—Any agency  
2           described in subsection (a) or (c) of section 108  
3           which receives a notice from a State under sub-  
4           paragraph (A) with respect to any action de-  
5           scribed in such subparagraph shall have the  
6           right—

7                   “(i) to move to stay the action, pend-  
8                   ing the final disposition of a pending Fed-  
9                   eral matter as described in paragraph (4);

10                   “(ii) to intervene in an action under  
11                   paragraph (1);

12                   “(iii) upon so intervening, to be heard  
13                   on all matters arising therein;

14                   “(iv) to remove the action to the ap-  
15                   propriate United States district court; and

16                   “(v) to file petitions for appeal.

17           “(3) INVESTIGATORY POWERS.—For purposes  
18           of bringing any action under this subsection, nothing  
19           in this subsection shall prevent the attorney general,  
20           or officers of such State who are authorized by such  
21           State to bring such actions, from exercising the pow-  
22           ers conferred on the attorney general or such offi-  
23           cers by the laws of such State to conduct investiga-  
24           tions or to administer oaths or affirmations or to

1       compel the attendance of witnesses or the production  
2       of documentary and other evidence.

3           “(4) LIMITATION ON STATE ACTION WHILE  
4       FEDERAL ACTION IS PENDING.—If any Federal  
5       agency described in subsection (a) or (c) of section  
6       108 has instituted an enforcement action for a viola-  
7       tion of subsection (h), no State may, during the  
8       pendency of such action, bring an action under this  
9       subsection against any creditor named in the en-  
10      forcement action for any violation of subsection (h)  
11      that is alleged in that action.”.

12      (c) EFFECTIVE DATE OF REGULATIONS.—

13           (1) PUBLICATION OF FINAL REGULATIONS.—  
14      Notwithstanding section 105(d) of the Truth in  
15      Lending Act, the Board of Governors of the Federal  
16      Reserve System shall publish in final form in the  
17      Federal Register before the end of the 6-month pe-  
18      riod beginning on the date of the enactment of this  
19      Act any regulations required under the amendments  
20      made by subsection (a) or (b) and such regulations  
21      as the Board determines to be appropriate to imple-  
22      ment such amendments.

23           (2) EFFECTIVE DATE.—The regulations pub-  
24      lished in final form in accordance with paragraph

- 1 (1) shall take effect not later than 90 days after the
- 2 date of such publication.

